

AMENDED IN SENATE MAY 15, 2002
AMENDED IN SENATE APRIL 24, 2002
AMENDED IN SENATE SEPTEMBER 14, 2001
AMENDED IN SENATE JULY 18, 2001
AMENDED IN SENATE JULY 9, 2001
AMENDED IN ASSEMBLY APRIL 26, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright

December 4, 2000

An act to add Section ~~399.10~~ 454.5 to the Public Utilities Code, relating to public utilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical corporations: procurement plans.

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding providing guidance to electrical corporations and the commission for the procurement of electricity and electricity demand reductions by an

electrical corporation and providing for review by the commission of procurement plans of electrical corporations.

This bill would amend the act to require the commission to review and adopt a procurement plan for each electrical corporation in accordance with elements, incentive mechanisms, and objectives set forth in the bill.

The bill would authorize the commission to engage a highly capable independent consultant or advisory service to evaluate risk management and strategy. The bill would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, and to determine the impact of a proposed divestiture on an electrical corporations procurement plan.

The bill would allow an electrical corporation that serves less than 500,000 retail customers within the state to file with the commission a request for exemption from the provisions of the bill, ~~which requested exemption the commission would be required to grant~~. *The bill would require the commission to grant the exemption* upon a showing of good cause.

(2) Existing law makes a violation of the provisions of the Public Utilities Act a crime.

This bill, by imposing new requirements on electrical corporations, would expand the scope of that crime, and thus impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The bill would appropriate \$600,000 from the Public Utilities Commission Utility Reimbursement Account to the commission for the purposes of implementing this bill.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Provide guidance to electrical corporations and the Public Utilities Commission for the prospective procurement of electricity and electricity demand reductions by an electrical corporation.

(b) Ensure, by no later than January 1, 2003, that each electrical corporation whose customers are currently being served by the Department of Water Resources will resume procurement for those needs that are not being met by the Department of Water Resources.

~~(c) Direct the Public Utilities Commission to review each electric corporation's procurement plan in a manner that complies with the commission-adopted integrated resource plan, and~~

(c) *Direct the Public Utilities Commission, consistent with subdivisions (a) and (b) of Section 701.1 of the Public Utilities Code, to review each electrical corporation's procurement plan in a manner that assures creation of a diversified procurement portfolio, assures just and reasonable electricity rates, provides certainty to the electrical corporation in order to enhance its financial stability and creditworthiness, and eliminates the need, with—specified certain exceptions, for after-the-fact reasonableness reviews of an electrical corporation's prospective electricity procurement performed consistent with an approved procurement plan.*

SEC. 2. Section ~~399.10~~ 454.5 is added to the Public Utilities Code, to read:

~~399.10. (a) Each electrical corporation shall file a proposed procurement plan with the commission 60 days after the commission specifies the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, to be provided by the Department of Water Resources under its power purchase agreements to the customers of the electrical corporation. The proposed procurement plan shall specify the date the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve, which shall be referred to for purposes of this subdivision as the "proposed commencement date." The commission shall review and adopt a~~

~~procurement plan as specified in subdivisions (b), (c), and (d) no later than 90 days prior to the proposed commencement date.~~

454.5. (a) *The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan.*

(b) An electrical corporation's proposed procurement plan shall include, but ~~is not~~ *not be* limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served via spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

1 (8) Procedures for updating the procurement plan.

2 (9) A showing that the procurement plan will create or maintain
3 a diversified procurement portfolio consisting of both short-term
4 and long-term electricity and electricity-related and demand
5 reductions products.

6 (10) The electrical corporation's risk management policy,
7 strategy, and practices including specific measures of price
8 stability.

9 (11) A plan to achieve appropriate increases in diversity of
10 ownership and diversity of fuel supply of nonutility electrical
11 generation.

12 (12) A mechanism for recovery of reasonable administrative
13 costs related to procurement in the generation component of rates.

14 (c) The commission shall review and accept, modify, or reject
15 each electrical corporation's procurement plan. The commission's
16 review shall consider each electrical corporation's individual
17 procurement situation, and shall give strong consideration to that
18 situation in determining which one or more of the features set forth
19 in this subdivision shall apply to that electrical corporation. A
20 procurement plan approved by the commission shall contain one
21 or more of the following features, provided that the commission
22 may not approve a feature or mechanism for an electrical
23 corporation if it finds that the feature or mechanism would impair
24 the restoration of an electrical corporation's creditworthiness or
25 would lead to a deterioration of an electrical corporation's
26 creditworthiness:

27 (1) A competitive procurement process under which the
28 electrical corporation may request bids for procurement-related
29 services. The commission shall specify the format of that
30 procurement process, as well as criteria to ensure that the auction
31 process is open and adequately subscribed. Any purchases made
32 in compliance with the commission-authorized process shall be
33 recovered in the generation component of rates.

34 (2) An incentive mechanism that establishes a procurement
35 benchmark or benchmarks and authorizes the electrical
36 corporation to procure from the market, subject to comparing the
37 electrical corporation's performance to the
38 commission-authorized benchmark or benchmarks. The incentive
39 mechanism shall be clear, achievable, and contain quantifiable
40 objectives and standards. The incentive mechanism shall contain

1 balanced risk and reward incentives that limit the risk and reward
2 of an electrical corporation.

3 (3) Upfront achievable standards and criteria by which the
4 acceptability and eligibility for rate recovery of a proposed
5 procurement transaction will be known by the electrical
6 corporation prior to the execution of the bilateral contract for the
7 transaction. The commission shall provide for expedited review
8 and either approve or reject the individual contracts submitted by
9 the electrical corporation to ensure compliance with its
10 procurement plan. To the extent the commission rejects a proposed
11 contract pursuant to this criteria, the commission shall designate
12 alternative procurement choices obtained in the procurement plan
13 that will be recoverable for ratemaking purposes.

14 (d) A procurement plan approved by the commission shall
15 accomplish each of the following objectives:

16 (1) Enable the electrical corporation to fulfill its obligation to
17 serve its customers at just and reasonable rates.

18 (2) Eliminate the need for after-the-fact reasonableness
19 reviews of an electrical corporation's actions in compliance with
20 an approved procurement plan, including resulting electricity
21 procurement contracts, practices, and related expenses. However,
22 the commission may establish a regulatory process to verify and
23 assure that each contract was administered in accordance with the
24 terms of the contract, and contract disputes which may arise are
25 reasonably resolved.

26 ~~(3) Complies with the commission-adopted integrated~~
27 ~~resource plan.~~

28 ~~(4)~~

29 (3) Ensure timely recovery of prospective procurement costs
30 incurred pursuant to an approved procurement plan. The
31 commission shall establish rates based on forecasts of
32 procurement costs adopted by the commission, actual
33 procurement costs incurred, or combination thereof, as
34 determined by the commission. The commission shall establish
35 power procurement balancing accounts to track the differences
36 between recorded revenues and costs incurred pursuant to an
37 approved procurement plan. The commission shall review the
38 power procurement balancing accounts, not less than
39 semiannually, and shall adjust rates or order refunds, as necessary,
40 to promptly amortize a balancing account. Until January 1, 2006,

1 this adjustment shall occur no later than when the power
2 procurement balancing account adjustment is overcollected or
3 undercollected in an amount that exceeds 5 percent of the electrical
4 corporation's actual recorded generation revenues for the prior
5 calendar year excluding revenues collected for the Department of
6 Water Resources. After January 1, 2006, this adjustment shall
7 occur when deemed appropriate by the commission consistent
8 with the objectives of this section.

9 ~~(5)–~~

10 (4) Moderate the price risk associated with serving its retail
11 customers, including the price risk embedded in its long-term
12 supply contracts, by authorizing an electrical corporation to enter
13 into financial and other electricity-related product contracts.

14 ~~(6)–~~

15 (5) Provide for just and reasonable rates, with an appropriate
16 balancing of price stability and price level in the electrical
17 corporation's procurement plan.

18 (e) The commission shall provide for the periodic review and
19 prospective modification of an electrical corporation's
20 procurement plan.

21 (f) The commission may engage a highly capable independent
22 consultant or advisory service to evaluate risk management and
23 strategy. The reasonable costs of any consultant or advisory
24 service is a reimbursable expense and eligible for funding pursuant
25 to Section 631.

26 (g) The commission shall adopt appropriate procedures to
27 ensure the confidentiality of any market sensitive information
28 submitted in an electrical corporation's proposed procurement
29 plan or resulting from or related to its approved procurement plan,
30 including, but not limited to, proposed or executed power purchase
31 agreements, data request responses, or consultant reports, or any
32 combination, provided that the Office of Ratepayer Advocates and
33 other consumer groups that are nonmarket participants shall be
34 provided access to this information under confidentiality
35 procedures authorized by the commission.

36 (h) Nothing in this section alters, modifies, or amends the
37 commission's oversight of affiliate transactions under its rules and
38 decisions or the commission's existing authority to investigate and
39 penalize an electrical corporation's alleged fraudulent activities,

1 or to disallow costs incurred as a result of gross incompetence,
2 fraud, abuse, or similar grounds.

3 (i) An electrical corporation that serves less than 500,000
4 electric retail customers within the state may file with the
5 commission a request for exemption from this section, which the
6 commission shall grant upon a showing of good cause.

7 (j) *(1)* Prior to its approval pursuant to Section 851 of any
8 divestiture of generation assets owned by an electrical corporation
9 ~~on September 1, 2001 or after the date of enactment of the act~~
10 ~~adding this section~~, the commission shall determine the impact of
11 the proposed divestiture on the electrical corporation's
12 procurement rates and shall approve a divestiture only to the extent
13 it finds, taking into account the effect of the divestiture on
14 procurement rates, that the divestiture is in the public interest and
15 will result in net ratepayer benefits. ~~Any~~

16 (2) Any electrical corporation's procurement necessitated as a
17 result of the divestiture of generation assets on or after the effective
18 date of the act adding this subdivision shall be subject to the
19 mechanisms and procedures set forth in this section only if its
20 actual cost is less than the recent historical cost of the divested
21 generation assets, ~~or if the commission deems that procurement~~
22 ~~eligible when it approves the divestiture.~~

23 (3) *Notwithstanding paragraph (2), the commission may deem*
24 *proposed procurement eligible to use the procedures in this section*
25 *upon its approval of asset divestiture pursuant to Section 851.*

26 SEC. 3. Nothing in this act is intended to imply that
27 procurement of electricity from third parties *in a wholesale*
28 *transaction* is the preferred method of fulfilling an electrical
29 corporation's obligation to serve its customers at just and
30 reasonable rates.

31 SEC. 4. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within
38 the meaning of Section 6 of Article XIII B of the California
39 Constitution.

1 SEC. 5. The sum of six hundred thousand dollars (\$600,000)
2 is hereby appropriated from the Public Utilities Commission
3 Utility Reimbursement Account in the General Fund to the Public
4 Utilities Commission for the purposes of implementing this act.

5 SEC. 6. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety
7 within the meaning of Article IV of the Constitution and shall go
8 into immediate effect. The facts constituting the necessity are:

9 In order that the Public Utilities Commission may undertake the
10 review and approval of each electric corporation's procurement
11 plan at the earliest possible time, in a manner consistent with this
12 act, it is necessary that this act take effect immediately.

